

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF VENTURA  
VENTURA DIVISION

TENTATIVE RULINGS

EVENT DATE: 04/09/2015  
JUDICIAL OFFICER: Tari Cody

EVENT TIME: 08:20:00 AM

DEPT.: 20

CASE NUM: 56-2014-00458073-CU-AS-VTA  
CASE TITLE: ROBERT DENYER VS AB ELECTROLUX

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Asbestos

EVENT TYPE: Demurrer (CLM)  
CAUSAL DOCUMENT/DATE FILED: Demurrer, 02/23/2015

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No notice of intent to appear is required. If you wish to submit on the tentative decision, you may send a telefax to Judge Cody's secretary at 805-662-6712, stating that you submit on the tentative. Please include the hearing date, the case name and case number on your telefax. Do not call in lieu of sending a telefax, nor should you call to see if your telefax has been received. If you submit on the tentative without appearing and the opposing party appears, you run the inherent risk of the hearing being conducted in your absence.

The court's tentative ruling is as follows:

Overrule Defendant Bell Industries, Inc.'s ("Bell") demurrer to the first through fourth and sixth causes of action in Plaintiffs Robert and Getrude Denyer's Complaint based on the argument that they are barred by the exclusive remedy provisions of the Workers' Compensation Act, on the grounds that these claims, on their face, are not entirely barred by the exclusivity provisions.

Defendant Bell relies on the following allegations in Exhibit A to the Complaint to support its argument based on workers' compensation exclusivity:

"Plaintiff, Robert Denyer was also exposed to asbestos dust that was carried into his work areas on the person and clothing of co-workers. While performing his regular job duties his person and clothing were contaminated with such asbestos dust. Plaintiff alleges and believes that his exposure occurred at job sites including , but not limited to, the following: ...[¶¶]

Employer: Bell Industries  
Date: 1975-1992  
Site: Pacoima, CA  
Job Title: Branch Manager."  
(Complaint, Exh. A, 34:21-35:13.)

Bell construes these allegations as indicating that the sole basis for Plaintiffs' claims against Bell are Robert Denyer's exposure to asbestos at the Pacoima worksite from 1975-1992. However, the language of the above allegations is additive ("Robert Denyer was **also** exposed...", "including, but not limited to, the following"), not exclusive.

Plaintiff also alleges direct exposure to asbestos-containing products from the 1950s through 1992 (*id.* at 34:4-20), and alleges that "defendants, their 'alternate entities' and each of them" negligently manufactured/designed/distributed/sold such products "**[a]t all times herein mentioned.**" (See Complaint, ¶¶5, 6 [emphasis added].) Simply stated, the Complaint also alleges that Robert Denyer was exposed to asbestos-containing products manufactured/distributed/sold by Bell during the entire period in question (i.e., the 1950s through 1992), and the Court must take these allegations as true for the purpose of ruling on Bell's present demurrer.

Based on the above, Plaintiffs allege that Robert Denyer was exposed to asbestos-containing products manufactured/distributed/sold by Bell during time periods when Robert Denyer was not employed by Bell. During such periods, Bell was not Robert Denyer's employer, therefore the "conditions of compensation" were not satisfied, and Bell is not entitled to invoke the exclusive remedy provisions of the Workers' Compensation Act for such periods. (See, e.g., *Hughes v. Argonaut Ins. Co.* (2001) 88 Cal. App. 4th 517, 523 [Holding that the exclusivity provisions only preclude civil actions against the employee's employer; they do not prevent actions against third parties to the employment relationship.].) Accordingly, Bell's "exclusive remedy" defense only applies, at most, to a portion of Plaintiffs' allegations against Bell. Because "[a] demurrer does not lie to a portion of a cause of action" (*PH II, Inc. v. Sup. Ct.* (1995) 33 Cal.App.4th 1680, 1682), Bell's demurrer to the first through fourth and sixth causes of action is overruled.

Defendant Bell to file and serve an Answer to the Complaint by no later than April 29, 2015.

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Absent waiver of notice and in the event an order is not signed at the hearing, the prevailing party shall prepare a proposed order and comply with CRC 3.1312 subdivisions (a), (b), (d) and (e). The signed order shall be served on all parties and a proof of service filed with the court. A "notice of ruling" in lieu of this procedure is not authorized.